

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Audio Visual Equipment and Supplies,
Inc., *et al.*,

Plaintiffs,

v.

Case No. 06-10904

County of Wayne, *et al.*,

Honorable Sean F. Cox

Defendants.

ORDER

Plaintiffs filed this action on February 28, 2006. On November 27, 2007, this Court issued its Opinion & Order granting Defendants' Motions for Summary Judgment and dismissing Plaintiffs' claims with prejudice and a judgment was issued on that same date.

On February 7, 2008, Plaintiffs filed a Notice of Appeal in this action.

The matter is currently before the Court on the "Consolidated Motion By Plaintiffs To Vacate Judgment And To Remand Pursuant To Rule 60(b)." (Docket Entry No. 88). The Court finds that the issues have been adequately presented in the parties' briefs and that oral argument would not significantly aid the decisional process. *See* Local Rule 7.1(e)(2), U.S. District Court, Eastern District of Michigan. The Court therefore orders that the motion will be decided upon the briefs. For the reasons that follow, the Court declines to rule on the motion.

"It is well settled that the filing of a notice of appeal operates to transfer jurisdiction of a case to the court of appeals; the district court is thereafter without jurisdiction." *Peck v. Lansing School District*, 148 F.3d 619, 625 (6th Cir. 1998). Although Plaintiffs' filed a Notice of Appeal

on February 7, 2008 (Docket Entry No. 71), Plaintiffs' motion urges this Court to rule on the instant motion under *First National Bank of Salem, Ohio v. Hirsch*, 535 F.2d 343 (6th Cir. 1976).

In *Hirsch*, the Sixth Circuit "first prescribed a procedure to be utilized when a Rule 60(b) motion is filed in the district court while an appeal is pending in the court of appeals." *Adkins v. Jeffreys*, 2009 WL 1083850 at * 2 (6th Cir. 2009). "Under the procedures outlines in *Hirsch*, where a party wishes to file a Rule 60(b) motion but has already filed a notice of appeal, 'the proper procedure is for him to file his motion in the [d]istrict [c]ourt. If that court indicates that it will grant the motion, the appellant should then make a motion to [the Sixth Circuit] for a remand of the case in order that the [d]istrict [c]ourt may grant the motion.'" *Id.* (quoting *Hirsch*). "If the district court is not disposed to grant the motion, 'the appeal will be considered in regular course.'" *Id.* "The decision of whether to consider the post-judgment motion while an appeal is pending is within the district court's discretion, and there is no error if the district court decides to let the appeal run its course." *Id.*; *LSJ Investment Co. v. O.L.D., Inc.*, 167 F.3d 320, 324 (6th Cir. 1999).

Having considered the instant motion, **IT IS ORDERED** that this Court hereby exercises its discretion and declines to rule on the instant motion.

IT IS SO ORDERED.

S/Sean F. Cox
Sean F. Cox
United States District Judge

Dated: June 30, 2009

I hereby certify that a copy of the foregoing document was served upon counsel of record on June 30, 2009, by electronic and/or ordinary mail.

S/Jennifer Hernandez

Case Manager